IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7774 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALU @ RAJU AKHAMABHAI MENA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 24/08/2000

ORAL JUDGEMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India, challenging the legality of order of detention dated 8th March, 2000 passed by respondent no.2 with respect to the detenu.

2. The detaining authority passed an order of

detention under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short the "Act") declaring the detenu as "dangerous person" within the meaning of Sec.2(C) of the Act and that his activities are prejudicial to the maintenance of Public Order. In the papers with regard to grounds of detention, the detaining authority has referred four different criminal cases lodged against the detenu. That four cases are pending for investigation with the Investigating Officer. Out of four cases, two cases were lodged with Vatva Police Station, while rest of two cases were lodged with Vatva, G.I.D.C.Police Station. Four cases are filed for the offences punishable under Secs. 454-547-380-114 of the Indian Penal Code. Over and above, the detaining authority also took into consideration the statements of two witnesses of which identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. That two statements of witnesses were recorded by Police Sub Inspector on 6th March, 2000, and the same were verified by the detaining authority -respondent no.2 on 8th March, 2000 and on that very day i.e. on 8th March, 2000, the detaining authority passed the order of detention with respect to the detenu.

3. Shri H.R.Prajapati, learned advocate for the detenu has argued that looking to the aforesaid respective dates, it was not possible for the detaining authority to apply his mind for his subjective satisfaction for passing an order of detention. He has placed reliance on the case of KALIDAS CHANDULAL KAHAR VS. STATE OF GUJARAT AND OTHERS, reported in A (1993) 2 34(2) G.L.R. 1656, wherein it has been held by this Court that the detaining authority is expected to do some exercise before actual passing the order of detention for claiming privilege under Sec.9(2) of the Act.

4. Looking to the papers which relate to four cases and two statements of anonymous witnesses which are relied on by the detaining authority, it was not possible to apply his mind to verify the statements, more particularly for scrutiny of the facts stated therein. He is expected to verify the statements on the point whether that statements are genuine or not and whether persons whose statements are recorded, are fictitious persons, or not and whether that statements are bogus or concocted or not. For this type of verification, some time is necessary ad for that exercise by the detaining authority, one has to go for perusal of these statements. Here in this case, the detaining authority passed the order of detention on the same day i.e. on 8th March, 2000. This is not possible for the detaining authority

to verify those statements on the same day. Under the circumstances, the order of detention is bad an illegal which requires to be quashed and set aside.

5. Here in this case, none of the respondents has filed affidavit-in-reply to controvert the facts stated by the petitioner in his petition. This Court has, in Special Civil Application No. 6322 of 1999 decided on 11th February, 2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged in this petition.

5. Here in this case, looking to the facts and circumstances of this present case, the detaining authority had no time to verify the statements of witnesses recorded before he passed detention order. In view of this, there is a doubt that he had not subjectively satisfied himself for passing the order of detention against the detenu.

6. In view of what is discussed hereinabove, this petition deserves to be allowed and accordingly it is allowed. The order dt. 8th March, 2000 passed against detenu by the respondent no.2 which is challenged in this writ petition is bad and illegal and the same is quashed and set aside. The detenu is ordered to be set at liberty forth with, if he is not wanted in any other criminal case. Rule is made absolute accordingly.

Direct Service is permitted.

Date: 24/8/2000. (H.H.MEHTA,J.)
ccshah